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(Notices)

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COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 273/01)

Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

OJ C 258, 25.8.2012

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OJ C 250, 18.8.2012

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These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Supreme Administrative Court (Nejvyšší správní soud) (Czech Republic) lodged on 24 May 2012 — JS v Česká správa sociálního zabezpečení

(Case C-253/12)

(2012/C 273/02)

Language of the case: Czech

Referring court

Supreme Administrative Court (Nejvyšší správní soud)

Parties to the main proceedings

Applicant: JS

Defendant: Česká správa sociálního zabezpečení (The Czech social security administration)

Questions referred

1. Does Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community ([1]) (Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems) ([2]) exclude from its scope *ratione personae* a citizen of the Czech Republic who, in circumstances such as those of the present case, before 1.1.1993 was subject to the legislation governing pensions insurance of a former State (the Czech and Slovak Federal Republics) and those periods, in accordance with Article 20 of the Agreement on social security concluded on 29.10.1992 between the Czech [Republic] and the Slovak Republic referred to in Annex III to Regulation (EEC) No 1408/71 of the Council (Annex II to Regulation (EC) No 883/2004 of the European Parliament and of the Council), are regarded as periods under the Slovak Republic and, under the national rules established by the Constitutional Court of the Czech Republic, simultaneously also as periods under the Czech Republic?

If the answer to question (1) is in the negative:

2. Does Article 18 of the Treaty on the Functioning of the European Union in conjunction with Article 4(2) of the Treaty on European Union and with Article 3(1) of Regulation (EEC) No 1408/71 of the Council (or Article 4 of Regulation (EC) No 883/2004 of the European Parliament and of the Council) prevent the authorities in the Czech Republic, in circumstances such as those of the present case, from offering preferential treatment (a supplement to old age benefit where the amount of that benefit granted under Article 20 of the Agreement on social security concluded on 29.10.1992 between the Czech [Republic] and the Slovak Republic and under Regulation (EEC) No 1408/71 of the Council (Regulation No 883/2004) is lower than the benefit which would have been received if the retirement pension had been calculated according to the legislation of the Czech Republic) only to citizens of the Czech Republic, where the fundamental right to security in old age interpreted by the Constitutional Court of the Czech Republic specifically in relation to periods of pension benefit acquired in the former CSFR, and perceived as a part of the national identity, leads to that treatment, and where that treatment is not such as to interfere with the right of freedom of movement for workers as a basic right of the Union, in the situation where offering similar treatment to all other citizens of Member States of the EU who also acquired similar periods of pension benefit in the former CSFR would lead to a significant threat to the financial stability of the Czech Republic's system of pensions insurance?

If the answer to question (2) is in the affirmative:

3. Does European Union law prevent the national court, which is the highest court in the State in the field of administrative law and against whose decision there is no right of appeal, from being, in accordance with national law, bound by the legal assessment of the Constitutional Court of the Czech Republic where that assessment seems not to be in accordance with Union law as interpreted by the Court of Justice of the European Union?

([1]) OJ L 149, p. 2;
([2]) OJ L 166, p. 1;

Action brought on 1 June 2012 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union, European Parliament

(Case C-270/12)

(2012/C 273/03)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: A. Robinson, Agent, J. Stratford QC, A. Henshaw, Barrister)

Defendants: Council of the European Union, European Parliament

The applicant claims that the Court should:

— annul Article 28 of Regulation (EU) 236/2012 of the European Parliament and of the Council of 14 March 2012 on short-selling and certain aspects of credit default swaps ([1]).

— order the Defendants to pay the costs of the application.

Pleas in law and main arguments

Article 28, headed 'ESMA intervention powers in exceptional circumstances', requires the European Securities and Markets Authority ('ESMA') to prohibit or impose conditions on the entry by natural or legal persons into short sales or similar transactions, or to require such persons to notify or publicise such positions.

ESMA shall take such measures if a) they address a threat to the orderly functioning and integrity of the financial markets, or to the stability of the whole or part of the financial system in the Union; b) there are cross-border implications; and c) competent authorities have not taken any measures to address the threat or the measures they have taken do not adequately address the threat. The measures are valid for up to three months, but ESMA is empowered to renew them indefinitely. The measures prevail over any previous measures taken by a competent authority pursuant to the Short Selling Regulation.

The United Kingdom submits that Article 28 is unlawful on the following grounds.

Firstly, it is contrary to the second principle established by the Court of Justice in Case 9/56 Meroni v High Authority [1957 & 1958] ECR 133, because:

1. The criteria as to when ESMA is required to take action under Article 28 entail a large measure of discretion.

2. ESMA is given a wide range of choices as to what measure or measures to impose, and what exceptions to specify, and these choices have very significant economic policy implications.

3. The factors which ESMA must take into account contain tests which are highly subjective.

4. ESMA is empowered to renew its measures without any limit on their overall duration.

5. Even if (contrary to the United Kingdom's submissions) Article 28 did not involve ESMA in making macroeconomic policy choices, ESMA nonetheless has a broad discretion as regards the application of policy to any particular case, as in Meroni itself.

Secondly, Article 28 purports to empower ESMA to impose measures of general application which have the force of law, contrary to the Court's decision in Case 98/80 Giuseppe Romano v Institut national d'assurance maladie-invalidité [1981] ECR 1241.

Thirdly, Article 28 purports to confer on ESMA a power to adopt non-legislative acts of general application, whereas in the light of Articles 290 and 291 TFEU, the Council has no authority under the Treaties to delegate such a power to a mere agency outside of these provisions.

Fourthly, if and to the extent that Article 28 were interpreted as empowering ESMA to take individual measures directed at natural or legal persons, it would be ultra vires Article 114 TFEU.

Article 28 can be severed from the remainder of the Short Selling Regulation. Its removal would leave essentially intact the remainder of the Regulation.

([1]) OJ L 86, p. 1

Reference for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 4 June 2012 — Jiří Sabou v Finanční ředitelství pro hlavní město Prahu

(Case C-276/12)

(2012/C 273/04)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Jiří Sabou

Defendant: Finanční ředitelství pro hlavní město Prahu

Questions referred

1. Does it follow from European Union law that a taxpayer has the right to be informed of a decision of the tax authorities to make a request for information in accordance with Directive 77/799/EEC? ([1]) Does the taxpayer have the right to take part in formulating the request addressed to the requested Member State? If the taxpayer does not derive such rights from European Union law, is it possible for domestic law to confer similar rights on him?

2. Does a taxpayer have the right to take part in the examination of witnesses in the requested State in the course of dealing with a request for information under Directive 77/799/EEC? Is the requested Member State obliged to inform the taxpayer beforehand of when the witness will be examined, if it has been requested to do so by the requesting Member State?

3. Are the tax authorities in the requested Member State obliged, when providing information in accordance with Directive 77/799/EEC, to observe a certain minimum content of their answer, so that it is clear from what sources and by what method the requested tax authorities have obtained the information provided? May the taxpayer challenge the correctness of the information thus provided, for example on grounds of procedural defects of the proceedings in the requested State which preceded the provision of the information? Or does the principle of mutual trust and cooperation apply, according to which the information provided by the requested tax authorities may not be called in question?

([1]) Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15).

Reference for a preliminary ruling from the Oberlandesgericht Koblenz (Germany) lodged on 7 June 2012 — Deutsche Lufthansa AG v Flughafen Frankfurt Hahn GmbH

(Case C-284/12)

(2012/C 273/05)

Language of the case: German

Referring court

Oberlandesgericht Koblenz

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: Flughafen Frankfurt Hahn GmbH

Questions referred

1. Does an uncontested decision of the Commission to initiate a formal investigation procedure under the second sentence of Article 108(3) TFEU have the result that, in appeal proceedings concerning the recovery of payments made and an order to refrain from making future payments, a national court is bound by the Commission's legal opinion in that decision as to whether a measure constitutes State aid?

2. If Question 1 is answered in the negative:

   Are measures adopted by a public undertaking within the meaning of Article 2(b)(i) of Commission Directive 2006/111/EC, ([1]) which operates an airport, to be regarded, for the purposes of State aid law, as selective measures within the meaning of Article 107(1) TFEU, simply because they benefit only airlines which use the airport?

3. If Question 2 is answered in the negative:

   (a) Is the criterion of selectivity not satisfied if the public undertaking which operates the airport offers the same conditions, and in a transparent manner, to all airlines which opt to use the airport?

   (b) Is this still the case if the airport operator adopts a specific business model (cooperation with 'low-cost carriers', in this instance), which tailors its conditions of use to such customers, with the result that those conditions are not equally attractive to all airlines?

   (c) Is there a selective measure, at any rate, if the vast majority of the airport's passengers has been attributable to a single airline for a number of years?

([1]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ 2006 L 318, p. 17).

Reference for a preliminary ruling from the Verwaltungsgericht Gelsenkirchen (Germany) lodged on 12 June 2012 — Michael Schwarz v Stadt Bochum

(Case C-291/12)

(2012/C 273/06)

Language of the case: German

Referring court

Verwaltungsgericht Gelsenkirchen

Parties to the main proceedings

Applicant: Michael Schwarz

Defendant: Stadt Bochum

Question referred

Is Article 1(2) of Council Regulation (EC) No 2252/2004 ([1]) of 13 December 2004, as amended by Regulation (EC) No 444/2009 ([2]) of the European Parliament and of the Council of 6 May 2009, valid?

([1]) Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1).

([2]) Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2009 L 142, p. 1; corrected version: OJ 2009 L 188, p. 127).

Action brought on 14 June 2012 — European Commission v Kingdom of Belgium

(Case C-296/12)

(2012/C 273/07)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: R. Lyal and W. Roels, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by approving and maintaining in force tax relief on pension savings in so far as this applies only to payments to Belgian institutions and Belgian funds, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty on the Functioning of the European Union, and in particular Articles 56 and 63 thereof;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission takes the view that the failure to grant tax relief for payments to institutions which are established in another Member State, while tax relief is available for payments to institutions established in Belgium, constitutes an impediment to the free movement of services both for recipients of those services and for providers which are not established in Belgium.

Likewise the Commission takes the view that the failure to grant tax relief for deposits in individual or collective accounts or payments of premiums for life insurance contracts with and to institutions established in another Member State, while tax relief is available for similar deposits with and payments to institutions established in Belgium, constitutes an impediment to the free movement of capital in the sense that Belgian depositors and policyholders are discouraged from holding deposits or taking out life insurance with an institution that is not established in Belgium because those deposits or life insurance contracts do not attract tax relief and are consequently less advantageous.

Those impediments are, according to the Commission, not justified on any grounds.

Reference for a preliminary ruling from the Conseil d'État (France), lodged on 18 June 2012 — Confédération paysanne v Ministre de l'alimentation, de l'agriculture et de la pêche

(Case C-298/12)

(2012/C 273/08)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Confédération paysanne

Defendant: Ministre de l'alimentation, de l'agriculture et de la pêche

Questions referred

1. Do paragraphs 1 and 5 of Article 40 of Council Regulation (EC) No 1782/2003 of 29 September 2003, ([1]) regard being had to their wording, but also to their purpose, authorise Member States to base the right to revalorisation of the reference amount for farmers whose production has been

seriously affected by reason of agri-environmental commitments to which they have been subject, for all or part of the reference period, on a comparison between the amounts of the direct payments received during the years affected by such commitments and those received during years which were not affected by such commitments?

2. Do paragraphs 2 and 5 of Article 40 of Council Regulation (EC) No 1782/2003 of 29 September 2003 authorise Member States to base the right to revalorisation of the reference amount for farmers whose production has been seriously affected by reason of agri-environmental commitments to which they have been subject, during the entire reference period, on a comparison between the amount of direct payments received during the last year not affected by an agri-environmental commitment, including cases in which that year is eight years prior to the reference period, and the annual average amount of direct payments received during the reference period?

(1) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

Reference for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 18 June 2012 — GREEN — SWAN PHARMACEUTICALS CR, a.s. v Státní zemědělská a potravinářská inspekce

(Case C-299/12)

(2012/C 273/09)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: GREEN — SWAN PHARMACEUTICALS CR, a. s.

Defendant: Státní zemědělská a potravinářská inspekce (The Czech Agricultural and Food Inspection Authority)

Questions referred

1. Is the following health claim: *'The preparation also contains calcium and Vitamin D3, which help to reduce a risk factor in the development of osteoporosis and fractures'*, a reduction of disease risk claim within the meaning of Article 2(2)(6) of Regulation (EC) No 1924/2006 (1) of 20 December 2006 on nutrition and health claims made on foods, as amended by Commission Regulation (EU) No 116/2010 (2) of 9 February 2010, even though it is not expressly implied in this claim that the consumption of that preparation would significantly reduce a risk factor in the development of disease mentioned?

2. Does the concept of a trade mark or brand name within the meaning of Article 28(2) of Regulation (EC) No 1924/2006 of 20 December 2006 on nutrition and health claims made on foods, as amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, also include a commercial communication on the packaging of the product?

3. Should the transitional provision in Article 28(2) of Regulation (EC) No 1924/2006 of 20 December 2006 on nutrition and health claims made on foods, as amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, be interpreted to refer to (any) foods which existed prior to 1 January 2005, or to refer to foods to which a trade mark or brand name was affixed and which existed in that form before that date?

(1) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods; OJ 2006 L 404, p. 9.

(2) Commission Regulation (EU) No 116/2010 of 9 February 2010 amending Regulation (EC) No 1924/2006 of the European Parliament and of the Council with regard to the list of nutrition claims (Text with EEA relevance); OJ 2010 L 37, p. 16.

Action brought on 26 June 2012 — European Commission v Slovak Republic

(Case C-305/12)

(2012/C 273/10)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by P. Hetsch, D. Düsterhaus and A. Tokár, acting as Agents)

Defendant: Slovak Republic

Forms of order sought

— declare that, by failing to adopt the legislative, regulatory and administrative provisions necessary to bring its domestic law into conformity with Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, (1) or in any event by failing to notify the Commission of such measures, the Slovak Republic has failed to fulfil its obligations under Article 40 of that directive;

— impose upon the Slovak Republic, under Article 260(3) TFEU, a penalty payment for failure to notify such measures of EUR 17 136 per day as from the delivery date of the judgment in this case;

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

The prescribed period for transposition of the directive expired on 12 December 2010.

([1]) OJ L 312, 22.11.2008, p. 3.

Action brought on 26 June 2012 — European Commission v Republic of Poland

(Case C-308/12)

(2012/C 273/11)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, D. Düsterhaus and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not bringing into force all of the laws, regulations and administrative provisions necessary to transpose Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, ([1]) and in any event by not notifying the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Article 40(1) of that directive;

— impose on the Republic of Poland, in accordance with Article 260(3) TFEU, a periodic penalty payment for failure to comply with its obligation to notify the Commission of the measures for transposing Directive 2008/98/EC, at a daily rate of EUR 67 314,24 calculated from the date on which judgment is delivered in the present case;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period within which Directive 2008/98/EC had to be transposed expired on 12 December 2010.

([1]) OJ 2008 L 312, p. 3.

GENERAL COURT

Order of the General Court of 4 July 2012 — ICO Satellite v Commission

(Case T-350/09) [1]

(Actions for annulment — Period allowed for commencing proceedings — Point from which time starts to run — Absence of excusable error — Manifest inadmissibility)

(2012/C 273/12)

Language of the case: English

Parties

Applicant: ICO Satellite Ltd (Slough, United Kingdom) (represented by: S. Tupper, Solicitor, D. Anderson QC, and D. Scannell, Barrister)

Defendant: European Commission (represented by: G. Braun and A. Nijenhuis, acting as Agents, assisted by D. Van Liedekerke and K. Platteau, lawyers)

Interveners in support of the defendant: Council of the European Union (represented by: F. Florindo Gijón and G. Kimberley, acting as Agents), and Solaris Mobile Ltd (Dublin, Ireland) (represented by: J. Wheeler, Solicitor, and A. Robertson, Barrister)

Re:

Application for annulment of Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) (OJ 2009 L 149, p. 65).

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *ICO Satellite Ltd shall bear its own costs and pay those incurred by the European Commission.*

3. *The Council of the European Union and Solaris Mobile Ltd shall bear their own costs.*

[1] OJ C 267, 7.11.2009.

Order of the General Court of 4 July 2012 — TME v Commission

(Case T-329/11) [1]

(Public service contracts — Call for tenders in relation to the rehabilitation of the Bucharest wastewater treatment plant, jointly financed by the ISPA structural funds — Allegedly unlawful decision of the Romanian authorities to reject the tender submitted by the applicant — Refusal of the Commission to open a financial adjustment procedure with respect to Romania — Manifest inadmissibility)

(2012/C 273/13)

Language of the case: Italian

Parties

Applicant: TME SpA — Termomeccanica Ecologia (Milan, Italy) (represented by: C. Malinconico, S. Fidanzia and A. Gigliola, lawyers)

Defendant: European Commission (represented by: A. Aresu and P. van Nuffel, Agents)

Re:

First, application for annulment of the Commission's letter of 20 April 2011 concerning the complaint of TME SpA in respect of infringements of European Union law by Romania in the context of the project 'Bucharest Wastewater Treatment Plant Rehabilitation: Stage I ISPA 2004/RO/16/P/PE/003-03', inherent in the restructuring of the Bucharest wastewater treatment plant [D(2011)REGIO.B3/MAD] and, second, a claim for damages.

Operative part of the order

1. *The action is dismissed as being manifestly inadmissible.*

2. *TME SpA — Termomeccanica Ecologia shall bear its own costs as well as those incurred by the European Commission.*

[1] OJ C 252, 27.8.2011.

Order of the General Court of 9 July 2012 — Pigui v Commission

(Case T-382/11) ([1])

(Action for failure to act — Position taken — Application for directions to be issued — Manifest inadmissibility)

(2012/C 273/14)

Language of the case: English

Parties

Applicant: Cristina Pigui (Strejnic, Romania) (represented by: M. Alexe, lawyer)

Defendant: European Commission (represented by: J. Enegren and D. Roussanov, Agents)

Re:

Action for failure to act, seeking a declaration that the European Commission unlawfully failed to define its position on the applicant's request, first, to initiate, pursuant to Articles 4 and 15 of Decision No 1720/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing an action programme in the field of lifelong learning (OJ 2006 L 327, p. 45), an investigation into the Online Master organised by the European Online Academy (EOA), founded by the Centre international de formation européenne (CIFE), in cooperation with the Jean Monnet Chair at the University of Cologne (Germany), and, second, to take all measures provided for by Article 6 of that decision in order to prevent further illegal conduct, to restore the situation *ab initio* of those persons affected by such illegal conduct or, at least, in so far as the applicant is concerned, and, lastly, to withdraw the funding for that Master if it fails to comply with key human rights principles, to which reference is made in Article 1(3)(i) of that decision, and relevant principles of European Union law.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Cristina Pigui shall pay the costs.*

([1]) OJ C 282, 24.9.2011.

Order of the General Court of 3 July 2012 — Ghreiwati v Council

(Case T-543/11) ([1])

(Common foreign and security policy — Restrictive measures taken against Syria — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate)

(2012/C 273/15)

Language of the case: French

Parties

Applicant: Emad Ghreiwati (Al Maliki, Syria) (represented by: P.-F. Gaborit, lawyer)

Defendant: Council of the European Union (represented by: M.-M. Joséphidès and B. Driessen, Agents)

Intervener in support of the defendant: European Commission (represented by S. Bartelt and E. Cujo, Agents)

Re:

Application for annulment, first, of Council Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 228, p. 1), and of Council Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 228, p. 16) and, second, of Council Regulation (EU) No 950/2011 of 23 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 247, p. 3), and of Council Decision 2011/628/CFSP of 23 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 247, p. 17), in so far as the applicant is named in the list of persons subject to the restrictive measures in view of the situation in Syria.

Operative part of the order

1. *There is no need to adjudicate on the action;*

2. *The Council of the European Union is ordered to pay the costs;*

3. *The European Commission is ordered to bear its own costs.*

([1]) OJ C 355, 3.12.2011.

Order of the General Court of 3 July 2012 — Woodman Labs v OHIM — 2 Mas 2 Publicidad Integral (HERO)

(Case T-606/11) ([1])

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2012/C 273/16)

Language of the case: English

Parties

Applicant: Woodman Labs, Inc. (Sausalito, United States) (represented by: M. Graf, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: 2 Mas 2 Publicidad Integral, SL (Vitoria-Gasteiz, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 September 2011 (Case R 876/2010-4), relating to opposition proceedings between 2 Mas 2 Publicidad Integral, SL and Woodman Labs, Inc.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *Each party is to bear its own costs.*

([1]) OJ C 32, 4.2.2012.

Order of the General Court of 12 July 2012 — Chico's Brands Investments v OHIM — Artsana (CHICO'S)

(Case T-83/12) ([1])

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2012/C 273/17)

Language of the case: English

Parties

Applicant: Chico's Brands Investments, Inc. (Fort Myers, United States) (represented by: T. Holman, solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Artsana SpA (Grandate, Italy)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 27 October 2011 (Case R 2084/2010-1), relating to opposition proceedings between Artsana SpA and Chico's Brands Investments, Inc.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *Each party is to bear its own costs.*

([1]) OJ C 118, 21.4.2012.

Action brought on 22 May 2012 — MPM-Quality and Eutech v OHIM — Elton hodinářská (MANUFACTURE PRIM 1949)

(Case T-215/12)

(2012/C 273/18)

Language in which the application was lodged: Czech

Parties

Applicants: MPM-Quality v.o.s. (Frýdek-Místek, Czech Republic) and Eutech akciová společnost (Šternberk, Czech Republic) (represented by: M. Kyjovský, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Elton hodinářská, a.s.

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 March 2012 in Case R 826/2010-4,

— order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Composite trade mark 'MANUFACTURE PRIM 1949' no 3531662 for goods and services in classes 9, 14 and 35

Proprietor of the Community trade mark: Elton hodinářská, a.s.

Applicant for the declaration of invalidity of the Community trade mark: The applicants

Grounds for the application for a declaration of invalidity: Application on the basis of Article 51(1)(b) in conjunction with Article 8(1)(a) and (b) and Article 8(5) of Council Regulation (EC) No 207/2009, and on the basis of Article 52(1)(b) of that regulation

Decision of the Cancellation Division: Application dismissed

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: The applicants submit that the Board of Appeal infringed Articles 8(1)(a) and (b), 8(5) and 52(1)(b) of Council Regulation (EC) No 207/2009 ('the Regulation') in that it:

— proceeded from an incorrect interpretation of the burden of argument and proof under Articles 54 and 165(4) of the Regulation;

— incorrectly applied the case-law of the Court of Justice;

— did not take account of the substantial exploitation, well-known character and use of the international trade mark, which are important for the perception of the sign PRIM by the relevant consumers;

— incorrectly applied Article 55 in relation to Article 41 of the Regulation by asserting that the earlier rights to the sign must belong to the same owner;

— did not express a view on the facts put forward by the applicants and the evidence submitted by them, did not accord that evidence its significance, and did not deal at all with some of it (e.g. the licence agreements);

— did not take account of the fact that similar marks containing the word 'PRIM' are already registered in the European Union.

Action brought on 4 June 2012 — SNCF v Commission

(Case T-242/12)

(2012/C 273/19)

Language of the case: French

Parties

Applicant: Société nationale des chemins de fer français (SNCF) (Paris, France) (represented by: P. Beurier, O. Billard and V. Landes, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— order the Commission to pay all of the costs.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2012) 1616 final of 9 March 2012 declaring incompatible with the internal market the aid measures implemented by the French Republic in favour of Sernam SCS ([1]) by, inter alia, recapitalisation, granting guarantees, and the applicant's waiving of claims against Sernam.

In support of the action, the applicant relies on six pleas in law.

1. First plea in law: infringement of the applicant's rights of defence in that, by taking a position in the contested decision that did not appear in the decision to initiate the procedure, the Commission prevented the applicant from making known effectively its views on the relevance of that position.

2. Second plea in law: infringement of the principle of the protection of legitimate expectations in that the '*Sernam 2*' decision ([2]) created a situation that legitimised the applicant's expectation that the *en bloc* disposal of Sernam's assets was lawful.

3. Third plea in law: breach of the Commission's duty of care and of the principle of legal certainty in that the Commission adopted a decision almost seven years after Sernam's assets had been disposed of *en bloc*.

4. Fourth plea in law: errors of law and of fact in that the Commission took the view that the conditions referred to in Article 3(2) of the '*Sernam 2*' decision had not been complied with. This plea is amplified in six parts alleging errors that the Commission ostensibly committed by taking the view:

   — that the disposal of Sernam's assets *en bloc* did not take place on 30 June 2005;

   — that it did not constitute a sale;

   — that it constituted a transfer of Sernam SA in its entirety (assets and liabilities);

   — that it was not limited to the assets of Sernam SA, but was increased by EUR 59 million;

   — that it did not take place through a transparent and open procedure;

   — and that the ultimate purpose of a sale of assets was not observed.

5. Fifth plea in law: error of law in that the Commission took the view that the obligation to recover EUR 41 million of aid was transferred to Financière Sernam and to its subsidiaries, whereas Financière Sernam cannot be regarded as having benefited from an advantage inasmuch as it paid the market price for Sernam's assets *en bloc*.

6. Sixth plea in law: inadequate statement of reasons and errors of fact and of law in that the Commission took the view that the measures provided for in the memorandum of understanding relating to the transfer of Sernam's assets *en bloc* constituted State aid, whereas the price paid for the acquisition was a market price resulting from an open, transparent, unconditional and non-discriminatory tendering procedure and was well below the liquidation costs that the applicant would have had to bear had Sernam been placed in liquidation by court order.

([1]) State Aid No C 37/2008 — France — Enforcing the '*Sernam 2*' decision — SA.12522.

([2]) Commission Decision 2006/367/EC of 20 October 2004 on the State aid partly implemented by France for the 'Sernam' company (notified under document number C(2004) 3940) (OJ 2006 L 140, p. 1).

Action brought on 25 June 2012 — Bimbo v OHIM — Café do Brasil (Caffè KIMBO)

(Case T-277/12)

(2012/C 273/20)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Café do Brasil SpA (Melito di Napoli, Italy)

Form of order sought

— Modify the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2012 in case R 1017/2011-4;

— In the alternative and only in the case the former claim would be rejected, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2012 in case R 1017/2011-4; and

— Order the defendant and the other party to the proceedings to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark in black, red, gold and white 'Caffè KIMBO', for goods in classes 11, 21 and 30 — Community trade mark application No 3478311

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Spanish trade mark registration No 291655 of the word mark 'BIMBO' for goods in class 30; Earlier well-known mark in Spain 'BIMBO' for goods in class 30

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Partially annulled the contested decision and dismissed the appeal for the remainder

Pleas in law:

— Infringement of Articles 64, 75 and 76 of Council Regulation (EC) No 207/2009; and

— Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009.

Action brought on 22 June 2012 — Inter-Union Technohandel v OHIM — Gumersport Mediterranea de Distribuciones (PROFLEX)

(Case T-278/12)

(2012/C 273/21)

Language in which the application was lodged: English

Parties

Applicant: Inter-Union Technohandel GmbH (Landau in der Pfalz, Germany) (represented by: K. Schmidt-Hern and A. Feutlinske, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Gumersport Mediterranea de Distribuciones, SL (Barcelona, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 March 2012 in case R 413/2011-2; and

— Order OHIM to pay the costs of the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'PROFLEX' for goods and service sin classes 9, 12 and 25

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: German trade mark registration No 39628817 for the word mark 'PROFEX', for goods in classes 6, 8, 9, 11, 12, 16, 17 and 21

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Annulled the contested decision and rejected the opposition entirely

Pleas in law: Infringement of Articles 42(2) and (3) of Council Regulation (EC) No 207/2009 and Rule 22 of Commission Regulation (EC) no 2868/95.

Action brought on 28 June 2012 — Cartoon Network v OHIM — Boomerang TV (BOOMERANG)

(Case T-285/12)

(2012/C 273/22)

Language in which the application was lodged: English

Parties

Applicant: The Cartoon Network, Inc. (Wilmington, United States) (represented by: I. Starr, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Boomerang TV, SA (Madrid, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 April 2012 in case R 699/2011-2; and

— Order the defendant to pay to the applicant, the applicant's costs of and occasioned by this appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'BOOMERANG' for services in classes 38 and 41

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark registration No 1160050 of the figurative mark 'Boomerang TV', for services in class 41

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009.

Action brought on 26 June 2012 — EI du Pont de Nemours v OHIM — Zueco Ruiz (ZYTEL)

(Case T-288/12)

(2012/C 273/23)

Language in which the application was lodged: English

Parties

Applicant: EI du Pont de Nemours and Company (Wilmington, United States) (represented by: E. Armijo Chávarri, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Enrique Zueco Ruiz (Zaragoza, Spain)

Form of order sought

— Set aside the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 March 2012 in case R 464/2011-2; and

— Order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'ZYTEL' for goods and services in classes 9, 12 and 37

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Community trade mark registration No 369314, of the word mark 'ZYTEL', for goods in classes 1 and 17; Well-known mark 'ZYTEL', for goods in classes 1 and 17

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and Article 8(5) of Council Regulation (EC) No 207/2009.

Action brought on 3 July 2012 — Deutsche Bank v OHIM (Passion to Perform)

(Case T-291/12)

(2012/C 273/24)

Language of the case: English

Parties

Applicant: Deutsche Bank (Frankfurt am Main, Germany) (represented by: R. Lange, T. Götting and G. Hild, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 April 2012 in case R 2233/2011-4; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: International registration designating the European Community of the word mark 'Passion to Perform' for goods and services in classes 35, 36, 38, 41 and 42 — Community trade mark application No W 1066295

Decision of the Examiner: Refused protection of the mark for the European Community

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009.

Action brought on 3 July 2012 — Mega Brands v OHIM — Diset (MAGNEXT)

(Case T-292/12)

(2012/C 273/25)

Language in which the application was lodged: English

Parties

Applicant: Mega Brands International, Luxembourg, Zweigniederlassung Zug (Zug, Suisse) (represented by: A. Nordemann, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Diset, SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 April 2012 in case R 1722/2011-4 and reject the opposition No B 1681447; and

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'MAGNEXT', for goods in class 28 — Community trade mark application No 8990591

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Spanish trade mark registration No 2550099 of the word mark 'MAGNET 4', for goods in class 28; Community trade mark registration No 3840121 of the figurative mark 'Diset Magnetics', for goods and services in classes 16, 28 and 41

Decision of the Opposition Division: Upheld the opposition and rejected the application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009.

Action brought on 4 July 2012 — Germany v Commission

(Case T-295/12)

(2012/C 273/26)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and J. Möller, and by T. Lübbig and M. Klasse, lawyers)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of 25 April 2012 on State aid SA.25051 (C 19/2010) (ex NN 23/2010) granted by Germany to the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg (Reference: C(2012) 2557 final);

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law: infringement of Article 107(1) TFEU and Article 106(2) TFEU on account of the Commission's erroneous denial that the Zweckverband's provision of reserve capacity to cope with epidemics is a service of general economic interest, and because the Commission flagrantly goes beyond the standard of assessment set for it by the Courts of the European Union ('the Courts of the Union'). In particular the Commission fails to recognise that it may, according to the established case-law of the Courts of the Union, review the Member States' margin of discretion in relation to the definition of services of general economic interest only in regard to 'manifest errors of assessment', and that it may not substitute its own assessment for that of the competent authorities of the Member State.

2. Second plea in law: infringement of Article 107(1) TFEU owing to the erroneous finding of an economic advantage on the basis of an erroneous assessment of the '*Altmark* criteria', according to which compensation for the discharge of public service obligations does not result in any 'favouring' within the meaning of Article 107(1) TFEU. The Commission made errors in the assessment of each of the four *Altmark* criteria relevant to the outcome of the case. In particular, with regard to the third *Altmark* criterion, the Commission did not confine itself to the issue requiring determination: whether compensation exceeds what is necessary to cover the costs incurred in discharging public service obligations. Instead, the Commission unlawfully examines whether the size of the reserve capacity to cope with epidemics that is provided by the Zweckverband Tierkörperbeseitigung is incommensurate with the epidemic scenarios considered possible, which it affirms, notwithstanding experts' reports to the contrary.

3. Third plea in law: infringement of Article 107(1) TFEU on account of erroneous findings in respect of the requirements that there be an effect on trade between Member States and distortion of competition. The Commission acknowledges that the Zweckverband Tierkörperbeseitigung has a legitimate regional monopoly in its disposal area, in which it does not face any legal competition. However, the Commission does not draw the necessary conclusion from this that any — even just potential — effect on trade between Member States or distortion of competition must be ruled out because the Zweckverband Tierkörperbeseitigung is not in competition with other undertakings, particularly undertakings from other Member States willing to become established.

4. Fourth plea in law: infringement of Article 106(2) TFEU on account of an erroneous assessment of that provision's conditions for approval. In particular the Commission fails to recognise in the contested decision that it must, under that provision, ascertain whether compensation for services of general interest amounts to overcompensation. It may not, however, discount the requirements of that provision by questioning the level of costs of provision, the appropriateness of political decisions taken by the national authorities in that field or the economic efficiency of the operator.

5. Fifth plea in law: interference in the division of powers between the European Union and Member States and breach of the subsidiarity principle of European Union law in so far as the Commission flagrantly disregards the right of assessment of the Member States and the subdivisions of those States in relation to the determination and definition of services of general interest by substituting its own assessment for the decision of the competent authorities (infringement of Article 14 TFEU and of Article 5(3) TEU).

6. Sixth plea in law: error of assessment on the part of the Commission and breach of the general prohibition of discrimination under European Union law, in that the Commission did not confine itself to an examination of manifest errors of assessment in its review of the definition of public service.

7. Seventh plea in law: failure to state reasons for the contested decision (infringement of Article 296(2) TFEU), since the Commission does not comment in that decision on the 'manifest error of assessment', within the meaning of the case-law of the Courts of the Union, made by the competent authorities, the legislature and the Bundesverwaltungsgericht (German Federal Administrative Court) in describing the provision of reserve capacity to cope with epidemics as a service of general economic interest.

Action brought on 2 July 2012 — Evropaiki Dinamiki v Commission

(Case T-297/12)

(2012/C 273/27)

Language of the case: Greek

Parties

Applicant: Evropaiki Dinamiki — Proigmena Sistimata Tilepikinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: V. Khristianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— order the Commission to pay it the sum of EUR 50 000 as compensation for the harm to its professional reputation which it has suffered on account of infringement of its professional confidentiality by the Commission, with compensatory interest from 3 July 2007 to delivery of the judgment in the present dispute and until full payment;

— order the Commission to pay its costs.

Pleas in law and main arguments

By the present action, the applicant seeks compensation from the General Court of the European Union for the harm which it has suffered on account of the unlawful conduct on the part of the European Commission ('the Commission'), under the second paragraph of Article 340 TFEU (non-contractual liability of the European Union). Specifically, the Commission caused damage to the applicant's professional reputation by sending a document which concerned an investigation being conducted in respect of the applicant to third-party companies on 3 July 2007.

The applicant submits that the conditions for establishing the Commission's non-contractual liability, as set out in settled case-law, that enable it to be compensated for the damage to its professional reputation are met, since the Commission unlawfully disclosed to third parties the existence and the content of an investigation conducted in its regard and confidential professional data concerning it.

Action brought on 9 July 2012 — Lidl Stiftung v OHIM — A Colmeia do Minho (FAIRGLOBE)

(Case T-300/12)

(2012/C 273/28)

Language in which the application was lodged: English

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Wolter and A. Berger, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: A Colmeia do Minho L^{da} (Aldeia de Paio Pires, Portugal)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 April 2012 in case R 1981/2010-2 insofar as the opposition was upheld;

— Order the defendant to pay the costs of the proceedings; and

— Order the intervener to pay the costs of the proceedings before the Office.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'FAIRGLOBE', for goods and services in classes 18, 20, 24, 25, 29, 30, 31, 32 and 33 — Community trade mark application No 6896261

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Portuguese trade mark registration No 221497 of the figurative mark 'GLOBO PORTUGAL', for goods in class 30; Portuguese trade mark registration No 221498 of the figurative mark 'GLOBO PORTUGAL', for goods in class 29; Portuguese trade mark registration No 311549 of the word mark 'GLOBO', for goods in class 29; Portuguese trade mark registration No 337398 of the word mark 'GLOBO', for goods in classes 2, 29 and 30

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Partially upheld the appeal and partially dismissed it

Pleas in law:

— Infringement of Article 15(1) in combination with Article 42(2) and (3) of Council Regulation No 207/2009 and Rule 22(3) and (4) of Commission Regulation No 2868/95;

— Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

Action brought on 6 July 2012 — Torrefacção Camelo v OHIM — Pato Hermanos (Decoration of packaging for coffee)

(Case T-302/12)

(2012/C 273/29)

Language in which the application was lodged: Spanish

Parties

Applicant: Torrefacção Camelo Lda (Campo Maior, Portugal) (represented by: J. Massaguer Fuentes, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Lorenzo Pato Hermanos, SA (Madrid, Spain)

Form of order sought

The applicant claims that the Court should declare, in view of the lodging of this pleading and the documents attached to it, that the direct action against the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market of 17 April 2012 in Case R 2378/2010-3 has been lodged within the prescribed period and in the correct form and, following the appropriate procedural steps, deliver judgment upholding the present action, thereby annulling the contested decision and upholding the decision of the Cancellation Division of 26 November 2010 which declared invalid Community design No 0 0070 6940-0001, and expressly order Lorenzo Patos Hermanos, SA to pay the costs if it opposes the present action.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: design with a red background, coffee beans with a white outline scattered at random over the red background, and two upper and lower horizontal yellow borders placed over the red background, for goods in Class 99-00 of the Locarno Classification — Community design No 0 0070 6940-0001

Proprietor of the Community trade mark: Lorenzo Pato Hermanos, SA

Applicant for the declaration of invalidity of the Community trade mark: the applicant

Grounds for the application for a declaration of invalidity: infringement of Articles 4 to 9 of Regulation (EC) No 6/2002

Decision of the Cancellation Division: application for a declaration of invalidity granted

Decision of the Board of Appeal: annulment of the decision of the Cancellation Division and rejection of the application for a declaration of invalidity

Pleas in law: infringement of Articles 5 and 6 of Regulation (EC) No 6/2002

Action brought on 9 July 2012 — Message Management v OHIM — Absacker (ABSACKER of Germany)

(Case T-304/12)

(2012/C 273/30)

Language in which the application was lodged: German

Parties

Applicant: Message Management GmbH (Wiesbaden, Germany) (represented by: C. Konle, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Absacker GmbH (Cologne, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 March 2012 in Case R 1028/2011-1 and dismiss the appeal relating to Opposition No B 1663700, which was brought against Community trade mark application No 8753691 filed by the applicant;

— order the defendant to pay the costs;

— in the alternative, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 March 2012 in Case R 1028/2011-1 and dismiss the appeal relating to Opposition No B 1663700, which was brought against Community trade mark application No 8753691 filed by the applicant, in so far as concerns Classes 32 and 33;

— in the further alternative, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 March 2012 in Case R 1028/2011-1 and dismiss the appeal relating to Opposition No B 1663700, which was brought against Community trade mark application No 8753691 filed by the applicant, in so far as concerns Class 33.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark in black and white, which represents an eagle and contains the word elements 'ABSACKER of Germany', for goods in Classes 25, 32 and 33 — Community trade mark application No 8 753 691

Proprietor of the mark or sign cited in the opposition proceedings: Absacker GmbH

Mark or sign cited in opposition: the national figurative marks in black, orange and white containing the word elements 'ABSACKER' for goods in Classes 25, 33 and 43

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the appeal was upheld and the mark applied for was rejected

Pleas in law: Erroneous assumption that the signs are similar and that there is a likelihood of confusion

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Action brought on 10 July 2012 — Spirlea v Commission

(Case T-306/12)

(2012/C 273/31)

Language of the case: German

Parties

Applicants: Darius Nicolai Spirlea (Cappezzano Paimore, Italy) and Mihaela Spirlea (Cappezzano Piamore) (represented by: V. Foerster and T. Pahl, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— accept the present application made on the basis of Article 263 TFEU;

— declare the action admissible; and

— declare it well founded, and accordingly find that the Commission has committed substantial procedural irregularities and other substantive errors of law;

— on that basis annul the decision of the European Commission's Secretariat-General of 21 June 2012 (SG.B.5/MKu/psi-Ares (2012)744102), in so far it concerns the letters of information of the Commission of 10 May 2011 and 10 October 2011;

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. Infringement of the duty to investigate and the extent of such an examination under Regulation (EC) No 1049/2001 [1]

   The applicants claim that the Commission infringed the duty to investigate 'exceptions' under Article 4(2) of Regulation (EC) No 1049/2001 and the extent to which such an investigation is to be carried out.

2. Infringement of the duty to state reasons in the second decision of 21 June 2012 in Cases GestDem 2012/1073 and 2012/1251

   The applicants allege an infringement of the duty to state reasons in refusing access to the information letters of the Commission of 10 May 2011 and 10 October 2011 to the extent required by law.

3. Equating the 'informal' EU pilot procedure with the procedure for failure to fulfil obligations laid down in Article 258 TFEU.

   In this regard, the applicants submit that the equating of the 'informal' EU pilot procedure with the procedure for failure to fulfil obligations laid down in Article 258 TFEU constitutes an error of law.

4. Erroneous assessment of the partial access to the documents

   In this regard, the applicants argue that the Commission disregarded the right to partial access to the information letters under Article 4(6) of Regulation (EC) No 1049/2001 and manifestly failed to carry out a concrete examination.

5. Infringement of the principles of proportionality/'overriding public interest'

   The applicants submit, in this regard, that the Commission infringed the principle of proportionality, since it failed to correctly weigh up the exception relied on of "protection of the purpose of investigations" against the "overriding public interest" (Article 4(2) of Regulation (EC) No 1049/2001.

6. Infringement of communication COM(2002) 141

   The applicants claim, in this respect, that the Commission systematically infringed — to the applicants' detriment — its self-imposed rules for handling complaints from EU-citizens and, consequently, infringed on a continual basis its commitment to bind itself by its own rules (Annex to communication COM(2002) 141).

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[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 11 July 2012 — Mayaleh v Council

(Case T-307/12)

(2012/C 273/32)

Language of the case: French

Parties

Applicant: Adib Mayaleh (Damascus, Syria) (represented by: G. Karouni, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul:

  — Implementing Decision 2012/256/CFSP of 14 May 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria in so far as it concerns Mr Adib Mayaleh;

  — Implementing Regulation No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria in so far as it concerns Mr Adib Mayaleh;

— Order the Council of the European Union to pay the costs under Articles 87 and 91 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are essentially identical or similar to those put forward in Case T-383/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 282, p. 30.

Action brought on 6 July 2012 — Zweckverband Tierkörperbeseitigung v Commission

(Case T-309/12)

(2012/C 273/33)

Language of the case: German

Parties

Applicant: Zweckverband Tierkörperbeseitigung in Rheinland-Pfalz, im Saarland, im Rheingau-Taunus-Kreis und im Landkreis Limburg-Weilburg (Rivenich, Germany) (represented by: A. Kerkmann, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 25 April 2012 on State aid SA.25051 (C-19/2010) (ex NN 23/2010), which Germany granted to the Zweckverband Tierkörperbeseitigung in Rheinland-Pfalz, im Saarland, im Rheingau-Taunus-Kreis und im Landkreis Limburg-Weilburg (Case C(2012) 2557 final);

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant relies on nine pleas in law.

1. First plea in law: infringement of Article 107(1) TFEU by determining that the applicant is to be regarded as an undertaking.

   The payment of contributions aims to fulfil a public service activity independent of the market. In carrying out that activity the applicant was not acting as an undertaking within the meaning of Article 107(1) TFEU.

2. Second plea in law: infringement of Article 107(1) and Article 106(2) TFEU in finding that the applicant was granted a financial advantage by means of the payments and that it was not a service in the general economic interest.

   Through the payments made by its members, the applicant does not receive any economic advantage, since the payments remain in the sphere of public service activity and there is no co-financing of any other activity offered by the applicant on the market. In the alternative, the applicant submits that it provides a service in the general economic interest, which the Commission fails to recognise, thereby manifestly infringing the powers of discretion recognised in the case-law, which constitutes an error of assessment. Moreover, the four 'Altmark criteria' are satisfied in the present case.

3. Third plea in law: infringement of Article 107(1) TFEU in wrongly finding that the criteria were satisfied for there to be a distortion of competition and distortion of trade between Member States.

   In Germany, the disposal of category 1 and category 2 animal by-products, within the meaning of Regulation (EC) 1069/2009, is not open to the market, with the result that, since the appliant was legitimately granted exclusive rights, competition was not distorted and trade not affected.

4. Fourth plea in law: infringement of Article 106(2) TFEU by misconceiving the conditions for approval laid down in that provision.

In its assessment, the Commission wrongly applied the criterion of economic interest and infringed its powers of examination in failing to restrict itself to examining whether there had been over-compensation.

5. Fifth plea in law: failure to observe the division of competencies between the European Union and the Member States laid down in Article 14 TFEU and, at the same time, infringement of the principle of subsidiarity (Article 5(3) EU).

   The Commission failed to observe the prerogative on the part of the authorities of the Member States in determining which services fall within the general economic interest.

6. Sixth plea in law: infringement of Article 108(1) TFEU and Article 1(b)(v) and Article 14 of Regulation (EC) 659/1999 in finding that the payments made since 1998 constitute new aid.

   The Commission's findings are based on an insufficient assessment of the facts.

7. Seventh plea in law: infringement of Article 2 EU, Article 52 of the Charter of Fundamental Rights, and of Article 14(1) of Regulation (EC) 659/1999 by failing to have regard to the requirements of the principles of protection of legitimate expectations and of legal certainty.

   The Commission wrongly assumed that, as a result of the judgment of the Bundesverwaltungsgericht (Federal Administrative Court) of 16 December 2010 (AZZ. 3 C 44.09), the applicant could not rely on the principle of protection of legitimate expectations, although the judgment expressly ruled out the possibility of classing payments of contributions to the applicant as State aid. Since that judgment has become final, the Commission also infringed the principle of legal certainty.

8. Eighth plea in law: infringement of Article 14(1) of Regulation (EC) 659/1999 in instructing the Member State to recover all payments dating back to 1998 — Infringement of the principles of necessity and proportionality.

   The Commission's requirement for Germany to recover all contributions made to the applicant since 1998 is disproportionate, since it fails to take account of the fact that, in reserving installation capacities in accordance with the decision of its members, the applicant actually incurred costs which were not covered.

9. Ninth plea in law: infringement of Article 107(1) TFEU in finding that the contribution payments used for the remediation of contaminated sites constitute State aid.

   The contributions used for the remediation of contaminated sites compensate for a structural disadvantage which the applicant incurred as a result of being assigned the sites by law by the *Land* Rheineland-Palatinate and, consequently, they do not constitute State aid.

Action brought on 12 July 2012 — Yuanping Changyuan Chemicals v Council

(Case T-310/12)

(2012/C 273/34)

Language of the case: English

Parties

Applicant: Yuanping Changyuan Chemicals Co. Ltd (Yuan Ping City, Xin Zhou, China) (represented by: V. Akritidis, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 325/2012 of 12 April 2012, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of oxalic acid originating in India and the People's Republic of China (OJ 2012 L 106, p. 1);

— Order that all the costs occasioned by the applicant in the course of the present proceedings be borne by the defendant.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging the violation of Article 3 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51) ('the basic Regulation'), stipulating that injury refers to injury to the 'Union industry'; and violation of Article 4(1) of the basic Regulation on the definition of the Union industry, as the defendant has wrongly defined the Union industry by including two non-cooperating producers, of which one had ceased production several years before the investigation period.

2. Second plea in law, alleging the violation of Article 3(2) and Article 3(5) of the basic Regulation, requiring the assessment of injury to the Union industry to be based on positive evidence following an objective assessment of all relevant

factors, as the defendant committed a manifest error of assessment in analysing the injury factors on the basis of two separate and conflicting sets of data (micro- and macro-economic factors) in a selective fashion.

3. Third plea in law, alleging the violation of Article 9(4) of the basic Regulation, requiring that duties be imposed only insofar as they are necessary to offset the effects of injurious dumping; Article 14(1) of the basic Regulation, requiring that duties are collected independently of the customs duties, taxes and other charges; and Articles 20(1) and 20(2) of the basic Regulation, requiring the disclosure of the essential facts and considerations on the basis of which anti-dumping duties are imposed, as the defendant committed a series of manifest errors in calculating the injury margin and also failed to produce a statement of reasons.

4. Fourth plea in law, alleging the violation of Article 20(5) of the basic Regulation, a minimum 10 day period to submit comments on any definitive disclosure as well as of the general principles of non-discrimination, and the duty of good administration, as the defendant has granted the applicant a shorter time limit to respond to the investigation's definitive disclosure than the time limit granted to all other parties in the proceedings.

Action brought on 13 July 2012 — Tubes Radiatori v OHIM — Antrax It (Radiators for heating)

(Case T-315/12)

(2012/C 273/35)

Language in which the application was lodged: Italian

Parties

Applicant: Tubes Radiatori Srl (Resana, Italy) (represented by: S. Verea, K. Muraro and M. Balestriero, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Antrax It Srl (Resana, Italy)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Third Board of Appeal of OHIM of 3 April 2012 in Case R 953/2011-3 and, thereby, declare that Community design No 000 169 370-0002 owned by TUBES RADIATORI Srl is valid, in so far as it is new and has individual character;

— Order the defendant to pay the costs, in accordance with Article 87 of the Rules of Procedure of the Court of First Instance of the Eurpopean Communities of 2 May 1991.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Radiators for heating — Community design No 169 370-0002

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: Antrax It Srl

Grounds for the application for a declaration of invalidity: Breach of Articles 4 and 9 of the Regulation on Community designs (CDR), in particular the ground for invalidity referred to in Article 25(1)(b) CDR, on the basis of lack of individual character for the purpose of Article 6(1)(b) CDR

Decision of the Cancellation Division: Declared the Community design invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Breach of Articles 4, 5 and 6 of Regulation No 6/2002

Action brought on 23 July 2012 — Netherlands v Commission

(Case T-325/12)

(2012/C 273/36)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels, J. Langer and M. de Ree, Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 11 May 2012 with reference SG-Greffe (2012) D/3150 in Case SA.28855 (N 373/2009) (ex C 10/2009 and N 528/2009 — Netherlands/ING — restructuring aid);

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging breach of the rights of the defence and the principle of due care.

— The applicant submits that the Commission was not entitled to adopt the contested decision without affording the Netherlands the opportunity of expressing its views on the grounds on which the Commission comes to the conclusion in the decision that the Netherlands granted aid to ING by agreeing to amended repayment terms.

— In the alternative, the Commission infringed the principle of due care by adopting the decision without taking account of the arguments put forward by the Netherlands in the earlier proceedings before the General Court which led to the judgment of 2 March 2012 in Joined Cases T-29/10 and T-33/10, and in which the Court concurred with those arguments.

2. Second plea in law, alleging infringement of Article 107 TFEU.

— The applicant submits that the decision is incompatible with Article 107 TFEU, because in point 213 of that decision the Commission stated on incorrect grounds that the amendment of the repayment terms involves State aid.

3. Third plea in law, alleging infringement of Article 107 TFEU, the Rules of Procedure and Article 266 TFEU.

— The applicant submits that the Commission has not implemented correctly the General Court's judgment of 2 March 2012, and has infringed Article 107 TFEU, the Rules of Procedure and Article 266 TFEU because, in the decision, it made approval of the capital injection subject to the same compensatory measures as in the earlier decision of 2009 (which the General Court annulled in its decision of 2 March 2012), although the Commission estimated that the aid is EUR 2 billion lower than the previous amount.

Action brought on 23 July 2012 — Al-Tabbaa v Council

(Case T-329/12)

(2012/C 273/37)

Language of the case: English

Parties

Applicant: Mazen Al-Tabbaa (Beirut, Lebanon) (represented by: M. Lester, Barrister and G. Martin, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul Council implementing Decision 2012/256/CFSP of 14 May 2012 implementing Council Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 126, p. 9), insofar as it concerns the applicant;

— Annul Council implementing Regulation (EU) No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (JO L 126, p. 3), insofar as it concerns the applicant; and

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law, alleging that the Council, in including the name of the applicant in the lists annexed to the contested measures, has:

— committed a manifest error of fact and assessment in deciding to apply restrictive measures in question to the applicant and considering that any of the criteria for listing were fulfilled;

— failed to give the applicant sufficient or adequate reasons for his inclusion in the lists;

— violated the applicant's basic fundamental rights of defence and the right to effective judicial protection; and

— infringed without justification or proportion, the applicant's fundamental rights, in particular his right to property, to conduct his business, to reputation and to private and family life.

Order of the General Court of 11 July 2012 — Romania v Commission

(Case T-483/07) [1]

(2012/C 273/38)

Language of the case: Romanian

The President of the Third Chamber has ordered that the case be removed from the register.

[1] OJ C 51, 23.2.2008.

Order of the General Court of 13 July 2012 — Embraer and Others v Commission

(Case T-75/10) ([1])

(2012/C 273/39)

Language of the case: English

The President of the Seventh Chamber has ordered that the case be removed from the register.

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 10 July 2012 — Prima TV v Commission

(Case T-504/10) ([1])

(2012/C 273/40)

Language of the case: Italian

The President of the Fifth Chamber has ordered that the case be removed from the register.

([1]) OJ C 346, 18.12.2010.

Order of the General Court of 10 July 2012 — RTI and Elettronica Industriale v Commission

(Case T-506/10) ([1])

(2012/C 273/41)

Language of the case: English

The President of the Fifth Chamber has ordered that the case be removed from the register.

([1]) OJ C 346, 18.12.2010.

Order of the General Court of 12 July 2012 — Spa Monopole v OHIM — Royal Mediterranea (THAI SPA)

(Case T-663/11) ([1])

(2012/C 273/42)

Language of the case: French

The President of the Fourth Chamber has ordered that the case be removed from the register.

([1]) OJ C 65, 3.3.2012.

Order of the General Court of 12 July 2012 — Gas v OHIM — Grotto (GAS)

(Case T-92/12) ([1])

(2012/C 273/43)

Language of the case: French

The President of the Fourth Chamber has ordered that the case be removed from the register.

([1]) OJ C 126, 28.4.2012.

Order of the General Court of 12 July 2012 — Gas v OHIM — Grotto (BLUE JEAN GAS)

(Case T-93/12) ([1])

(2012/C 273/44)

Language of the case: French

The President of the Fourth Chamber has ordered that the case be removed from the register.

([1]) OJ C 126, 28.4.2012.

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